IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6878 of 1996
With
SPECIAL CIVIL APPLICATION No. 1842 of 1997
With
SPECIAL CIVIL APPLICATION No. 5164 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATHUJI S VEROL & 29 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
SCA Nos.6878/96 & 1842/97.
MR IS SUPEHIA for Petitioner(s) : 1 - 30.
MS MANISHA SHAH, AGP for the respondents

SCA No.5164/97.
Ms Sangita Pahwa for the petitioner
Ms Manisha Shah, AGP for respondent No.1
Mr.Bharat Jani for respondent No.2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/03/2006

ORAL JUDGMENT

1. Since similar questions of law and facts arise in these petitions, they have been heard together and are being disposed of by this common judgment.

2. Facts giving rise to the present petitions are as follows:-

2.1 Petitioners in Special Civil Application No.6878 of 1996 are employees working as Livestock Inspectors under the Director of Animal Husbandry, Government of Gujarat. By resolution dated 5.7.91, the State Government formulated a scheme to obviate the difficulties of the employees who were stagnating without promotions for years together for want of promotional avenues and availability of posts in higher cadres. Certain benefits of giving higher pay-scales after 9, 18 and 27 years of stagnation were extended to such employees. Subsequently, however, resolution dated 5.7.91 came to be replaced by another resolution dated 16.8.94. Certain terms and conditions for grant of higher pay-scale were made more stringent. On account of introduction of the resolution dated 16.8.94, there was a necessity to adjust over-payments already made by implementing the provisions contained in the resolution dated 5.7.91 in favour of the employees. With

respect to the petitioners, such over-payments received vary from Rs.3,000 to Rs.20,000/-. Such excess payment was recovered by the Government from the provident fund lying with the Government. The petitioners have objected to the said action taken by the Government and sought setting aside of the recovery made.

2.2 The petitioners of Special Civil Application No.1842 of 1997 were also working as Livestock Inspectors under the Director of Animal Husbandry. They also challenged such similar recoveries made by the Government from their provident fund accounts by virtue of the introduction of the resolution dated 16.8.94.

2.3 The petitioner of Special Civil Application No.5164 of 1997 was a teacher working under the school run by Patan Nagar Sikshan Samiti. He also initially received benefits as per the Government Resolution dated 5.7.91. However, subsequently, upon introduction of the resolution dated 16.8.94, there was an occasion to recover the excess payment made which was made from the provident fund account of the petitioner. The petitioner has therefore challenged such a recovery.

3. The respondents have appeared in response to the notices issued by this Court and filed replies in these petitions. In reply to Special Civil Application

No.6878 of 1996, it is stated that on account of introduction of resolution dated 16.8.94, there was an occasion to recover the excess payment made to the petitioners. It is stated that as per the provisions contained in the said resolution, such recovery was effected in consultation with the Finance Department and pursuant to the resolution dated 29.9.94. It is stated that earlier scheme for grant of higher pay-scale (i.e. one introduced by the circular dated 5.7.91) was substituted by the subsequent scheme circulated by G.R. dated 16.8.94 in consultation with the Employees Unions and after due consideration by the Government. It is on this basis that the recovery is sought to be supported. It is further pointed out that in case of petitioner No.23, higher pay scale was withdrawn due to the departmental inquiry.

3.1The above reply would also cover the issues arising in Special Application No.1842 of 1997.

3.2 With respect to Special Civil Application No.5164 of 1997, respondent No.2 Shikshan Samiti has filed its detailed reply stating, inter alia, that the petitioner himself had exercised option by filing a declaration on 17.11.94 accepting the terms and conditions of the Government resolution dated 16.8.1994. It was pursuant

to this declaration that the petitioner was granted higher pay-scale. As per the terms and conditions of the resolution, excess payment made was required to be recovered. The petitioner had earlier preferred Special Civil Application No.9204 of 1995 complaining that the benefits flowing from resolution dated 5.7.91 are not being given to him for his pensionary benefits. This petition came to be rejected by the order dated 18.7.96 wherein the learned Judge was pleased to observe that resolution dated 5th July 1991 was replaced by another resolution dated 18th June 1994. A statement made on behalf of the respondent Nagarpalika that the petitioner would be granted benefits under the said resolution dated 18th June 1994 was recorded and in view of the said statement, the petition was rejected.

4. On the above pleadings on record, the learned advocates appearing for the parties have made submissions before the Court.

5. Learned advocate Shri Supehia appearing for the petitioners in Special Civil Application Nos.6878 of 1996 and 1842 of 1997 submitted that the respondents erred in effecting recovery of the alleged excess payment made to the petitioners. It was contended that as per the subsequent resolution dated 16.8.94,

benefits granted under resolution dated 5.7.91 could not have been taken away.

5.1It was contended that by virtue of rule 57-A of the Bombay Civil Services Rules (BCSR), any extra payment made even erroneously cannot be recovered. Reliance was placed on several decisions of this Court as well as the Hon'ble Supreme Court to urge that since the excess payment of salary was not on account of any fault on the part of the employees, the Government could not have recovered such excess payments.

5.2It was further contended that the respondents effected recovery from the provident fund accounts of the petitioners without giving any opportunity of being heard. It is contended that in any case, the respondents could not have effected recovery from the provident fund amounts of the petitioners lying with the Government.

5.3Reliance is placed on the decision of the learned single Judge of this Court in Special Civil Application No.8684 of 1996 rendered in 17.6.2004 to contend that no recovery from provident fund accounts could have been made, that too without hearing the petitioners. It is further contended that resolution dated 16.8.94 makes different provisions for those employees who had

retired by the time the said resolution was introduced in which case, the excess payments made were not to be recovered. It is, therefore, contended that the petitioners have been discriminated vis-a-vis the recovery to be made.

5.4Learned advocate Mrs.Pahwa appearing for the petitioner of Special Civil Application No.5164 of 1997 adopted the above submissions and reiterated that the Government could not have replaced the earlier resolution by the resolution dated 16.8.94.

6.On the other hand, learned AGP, Ms.Shah appearing for the State Government in these petitions opposed the prayers made in the petitions. It is contended that after careful consideration, the State Government in consultation with the Unions of the employees issued the Government Resolution dated 16.8.94. It is contended that pursuant to the said resolution, earlier GR dated 5.7.91 was withdrawn. It is contended that the petitioners are entitled to receive benefits under the subsequent GR dated 16.8.94 and any excess payment made was required to be recovered. It is contended that the petitioners have received benefits flowing from GR dated 16.8.94 and in fact the petitioners had agreed to abide by such terms and conditions.

7. Learned advocate Shri Jani appearing for respondent No.2 in Special Civil Application No.5164 of 1997 opposed the petition on the basis of the affidavit reply filed. He contended that the petitioner had in writing agreed to abide by the terms and conditions of GR dated 16.8.94. It was only on the basis of such an undertaking that the petitioner received the benefits of higher pay-scales.

8. Having heard the learned advocates appearing for the parties, I find that the Government had initially issued resolution dated 5th July 1991. A perusal of the said resolution would suggest that the Government wanted to obviate the difficulties faced by the employees who for want of vacancies in promotional posts had to stagnate for years together. The preamble to the resolution dated 5th July 1991 records that to deal with the problem of stagnation in many cadres due to restricted chances of promotion, the Government had pronounced the scheme of higher grade scales vide resolution dated 20th February 1991. In supercession of the said scheme, the Government was pleased to introduce the scheme for grant of higher grade scale. Some of the leading features of the said Scheme were that the employees stagnating in the same

cadre without any promotion for 9, 18 an 27 years of service would get the benefits of higher pay-scales upon completion of the said period of stagnation on fulfillment of the terms and conditions set out therein.

9. Upon perusal of the subsequent Government Resolution dated 16th August 1994, it becomes clear that on account of acceptance of Pay Commission Recommendations and on account of various schemes for grant of higher pay-scales and particularly one formulated under GR dated 5th July 1991, there has been huge financial burden on the Government. On account of the said liberal scheme for grant of higher pay-scales, large number of Government employees have become eligible to receive such higher pay-scales. It was observed that by 31st March 1992, the burden of salary on the Government touched Rs.1000 crores which was likely to increase by Rs.200 to Rs.230 crores per year. On account of the acceptance of the said scheme, there has been huge financial burden on the Government. The Government therefore, set up a Committee comprising of the Deputy Chief Minster, the Minister for Industries and the Minister of Finance as well as the Additional Chief Secretary to the Government of Gujarat. The Committee

deliberated the issues arising on several dates and came to the conclusion that the burden on the Government flowing from the scheme for grant of higher pay-scales of 9, 18 and 27 years of stagnation is not possible to bear. There have been anomalies in the implementation of the said scheme. The financial burden of the Government has been enormous. The entire scheme is, therefore, required to be reconsidered ab initio. The Committee, therefore, submitted its report to the Government on 17.7.94 and 12.8.94. Eventually, accepting the recommendations made by the Committee, the Government evolved a package deal and passed a fresh resolution on 16.8.94 superseding the earlier resolution of 5th July 1991. Certain conditions for grant of higher pay-scale were made more stringent. As per the said resolution, over-payment already made was required to be recovered. In clause 3(28) of the scheme, however, provisions were made for those who retired prior to 1st August 1994 with respect to whom recovery was waived and pay fixation already made was protected.

10. It can thus be seen that on account of the financial constraints, the Government was forced to revise its earlier resolution dated 5th July 1991. The same came

to be substituted by subsequent resolution dated 16.8.94. The scheme for grant of higher pay scale after 9, 18 and 27 years of stagnation was modified. This was on account of the considered opinion of the Government that it is not possible to bear the financial burden flowing from the resolution dated 5th July 1991. This decision of the Government came on the basis of the recommendations made by the Committee consisting of senior Ministers and Additional Chief Secretary to the State Government. The Employees Unions were also consulted before formulating the new policy. As a culmination of the said exercise, resolution dated 16.8.94 came to be issued. It cannot be gainsaid that for the purpose of grant of pay-scales, financial consideration of the Government cannot be lost sight of.

11. It is not in dispute that by virtue of introduction of resolution dated 16.8.94, pay fixation of the petitioners which was already made pursuant to the earlier resolution dated 5th July 1991 had to be modified. There is no dispute about the amount of recovery to be made from the petitioners. The only contention is that the Government could not have subsequently changed the earlier resolution and

effected recovery of the excess payment made when reasons for which cannot be attributed to the petitioners.

12.I am afraid such a contention cannot be accepted. Firstly, resolution dated 16.8.94 has not been challenged by the petitioners in any of the petitions. The legality of such resolution, therefore, is not in question before this Court. If that be so, the only question is whether recovery could have been made pursuant to the recalculations made by the Government on account of the introduction of resolution dated 16.8.94. When there is no dispute about the amount of recovery to be made, in the facts of the present case, hearing of the petitioners would have made no difference. Such hearing would therefore be a super-technicality and an empty formality. Of course, it cannot be suggested that the amount already recovered from the petitioners be refunded to them and after hearing them, effect same recovery about which the petitioners have not factually raised any dispute.

13.I am also not in agreement with the contention of the learned advocates appearing for the petitioners that the recovery of excess payment could not have been made. It is not a case where excess payment was made

by the Government on account of some error or mistake by the administration which cannot be attributed to the petitioners. The recovery sought and effected was on account of the introduction of a resolution which superseded the earlier resolution ab initio. In that view of the matter, the pay fixation of the petitioners was open to correction. Since the legality of the resolution dated 16.8.94 is not under challenge before this Court, it is only to be seen whether by the implementation of the subsequent resolution there was any recovery to be made from the petitioners. There is no dispute about the fact that the petitioners were paid certain amounts flowing from the resolution dated 5.7.91. Pay-scale of the petitioners had to be varied on account of the supercession of the resolution dated 5.7.91 by the subsequent resolution dated 6.8.94. Such a recovery cannot be compared with the recovery of excess payment made by the Government on account of some error on the part of the State Government. As noticed earlier, recovery was on account of the difference in salary paid to the petitioners on the basis of resolution dated 5th July 1991 which was superseded by a subsequent resolution dated 16.8.94 and the pay fixation of the petitioners corrected

pursuant to the said resolution.

14. Learned advocate for the petitioner, as noted earlier, also urged that in any view of the matter, such recovery could not have been effected from the provident fund accounts of the petitioners that too without hearing them. With respect to the legal contention, there cannot be much dispute. The fact, however, remains that the recoveries have been effected long back. The petitioners have received higher pay-scales under the resolution dated 16.8.94 though somewhat belatedly compared to what they would have received had the resolution dated 5.7.91 not been withdrawn by the Government. Thus the petitioners have all throughout received the benefits under the resolution dated 16.8.94. They have thus received benefits of higher pay-scales of posts on which they are not promoted. In absence of resolution dated 5.7.91 and 16.8.94, the petitioners would have stagnated in their base cadres without any promotion or promotional scales. In that view of the matter, in the facts of the present case, would it be justified to put back the clock and ask the Government to refund the amounts recovered from provident fund accounts of the petitioners and then permit the Government to effect

the very same recovery from some other source of amounts payable to the petitioners ? In my view, it would only be an arithmetical adjustment from one head to another. Ordinarily, the petitioners are justified in complaining about the recoveries made from the provident fund accounts without their consent. However, I have not found the recovery of excess payment made illegal. It would, therefore, be a case where after restoring the status quo ante, permit the Government to recover the very same amount from other head paid or payable to the petitioners. For such cosmetic purpose, I do not find it necessary or appropriate to strike down the Government action. Additionally, in case of petitioner in Special Civil Application No.5164 of 1997, he had given specific undertaking to abide by the terms and conditions contained in the resolution dated 16.8.94. The said petitioner had approached this Court and was assured that for fixation of his pension, effect of resolution dated 16.8.94 would be granted. The said petitioner, therefore, cannot turn around and now complain about the recovery made.

15.Considering the totality of the facts and circumstances of the case, I am unable to accept the

prayers made in these petitions. The petitions are therefore, rejected. Rule in each petition is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)